

No. 10084

IN THE
United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT

CALIFORNIA CENTURY COMPANY, a California Corpora-
tion, and RAYMOND LEWIS, doing business as Lewis
Construction Company,

Appellants,

vs.

SECURITY-FIRST NATIONAL BANK OF LOS ANGELES, a
national banking association,

Appellee.

APPELLANTS' OPENING BRIEF.

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APPELLANTS' OPENING BRIEF.

Statement of Pleadings and Facts Discloses Basis
Upon Which It Is Contended That District
Court Had No Jurisdiction and That the Above
Entitled Court Has Jurisdiction on Appeal.

It is contended by appellant that the above entitled court
has jurisdiction of this appeal by virtue of Section 128 (a)
and (d) of the Judicial Code (28 U. S. C. Section 225).

The applicable part of said section is set forth as follows:

(a) *Review of Final Decisions.* The circuit court of appeals shall have appellate jurisdiction to review by appeal final decisions—

First. In the district court, in all cases save where a direct review of the decision may be had in the Supreme Court under section 345 of this title. . . .

(d) *Circuits in which review shall be had.* The review under this section shall be in the following circuit courts of appeals: The decisions of a district court of the United States within a State in the circuit court of appeals for the circuit embracing such State; . . .

Appellant contends that the district court had no jurisdiction to try this case and that the pleadings disclose no basis from which it can be contended that said district court had such jurisdiction. The action was tried and judgment was entered [Tr. of Rec. p. 25] and appellant served and filed notice of appeal [Tr. of Rec. p. 27] within the time prescribed by law.

Statement of Case.

Appellee recovered a judgment against the California Century Corporation on or about the 20th day of March, 1940 in the Municipal Court of the City of Los Angeles, County of Los Angeles, State of California and thereafter said California Century Corporation transferred and assigned to appellant Raymond Lewis, doing business as Lewis Construction Company, shares of capital stock of the Amusement Enterprises, Inc. Subsequently and on the 20th day of April, 1940, appellant Raymond Lewis, doing business as Lewis Construction Company was adjudicated a bankrupt in the District Court of the United States, Southern District of California, Central Division, case number 36226C, Paul W. Sampsell was appointed receiver therein and the before mentioned shares of capital stock of the Amusement Enterprises, Inc., were delivered to said receiver.

Appellee alleged that the transfer of said shares from California Century Corporation to appellant was made without a valuable consideration while said corporation was insolvent, to hinder, delay and defraud existing creditors, to wit, appellee, of said corporation.

POINT I.

The United States District Court Had No Jurisdiction Over the Subject Matter or Parties in Said Action.

Section 23 (a) of the Bankruptcy Act provides as follows:

“Sec. 23. *Jurisdiction of United States and State Courts*—a. The United States district courts shall have jurisdiction of all controversies at law and in equity, as distinguished from proceedings under this Act, between receivers and trustees as such and adverse claimants, concerning the property acquired or claimed by the receivers or trustees, in the same manner and to the same extent as though such proceedings had not been instituted and such controversies had been between the bankrupts and such adverse claimants.”

The Act in itself excludes the United States District Courts of jurisdiction in actions of this nature in all cases except where said court would have had jurisdiction in an action between the parties had there been no bankruptcy proceedings. Appellee's complaint does not set forth any grounds upon which said court would be justified in taking jurisdiction over this matter.

At the time this action was filed, the bankruptcy court had in its possession the shares of stock of the Amusement Enterprises, Inc., the subject matter of this action. Said court had exclusive jurisdiction to determine adverse claims to said shares of stock.

Appellant makes two contentions here. First, that it is the duty of the bankruptcy court to determine and adjudicate adverse claims to property in its possession, and second, where in some instances the court sitting in

bankruptcy may give its permission for an action to be tried elsewhere, it must be tried in a state court unless the United States District Court would have had jurisdiction in an action between the parties had there been no bankruptcy.

In Volume 2 on page 552 of Collier on Bankruptcy, 14 Ed., states as follows:

“Legal or equitable actions against a receiver or trustee may be divided into three classes: (1) . . . ; (2) . . . ; and (3) suits against the receiver or trustee regarding the property of the bankrupt estate.

“. . . Actions in class (3) may be brought outside of the bankruptcy court only when that court consents thereto, and if brought in a district court sitting at law or in equity, would be governed by section 23 just as suits brought by the receiver or trustee, heretofore discussed.”

And in footnote 7a on page 548 it is stated:

“In the unusual case where a bankruptcy court would consent to a suit against the receiver or trustee in a federal district court at law or in equity regarding the bankrupt estate, the district court’s jurisdiction would be governed by section 23a, whereas section 23b clearly applies only to suits by the receiver or trustee.”

The case of *Schumacker v. Beeler*, 293 U. S. 367, 79 L. Ed. 443 holds as follows:

“In enacting section 23 it was clearly the intent of the Congress that the federal courts should not have the unrestricted jurisdiction of suits between trustees in bankruptcy and adverse claimants which these courts had exercised under the broad provisions

of section 2 of the Act of 1867. The purpose was to leave such controversies to be heard and determined for the most part in the state courts 'to the greater economy and convenience of litigants and witnesses' . . . The Congress by virtue of its constitutional authority over bankruptcies, could confer or withhold jurisdiction to entertain such suits and could prescribe the conditions upon which the federal courts should have jurisdiction."

Goodnaugh Mercantile & Stock Co. v. Galloway, 156 Fed. 504, holds:

"Thus the law leaves the parties to litigate as to those matters falling within the purview of the section in the courts that have jurisdiction, notwithstanding the adoption of the bankruptcy act."

In re Cohen et al., 107 Fed. (2d) 881, is an action commenced in the United States District Court by a claimant to property in possession of the trustee in bankruptcy. The court held:

"It is elementary that title to all property of a bankrupt vests in his trustee upon the adjudication and the bankruptcy court has jurisdiction to decide all adverse claims to the property, in the custody of the trustee, regardless of whether it is real estate situated in another district."

Thomson v. Magnolia Petroleum Co., 309 U. S. 478, 84 L. Ed. 876 holds:

"Bankruptcy courts have summary jurisdiction to adjudicate controversies relating to property over which they have actual or constructive possession.

"A court of bankruptcy has an exclusive and non-delegable control over the administration of an estate in its possession."

Gross v. Irving Trust Company, 289 U. S. 342, 77 L. Ed. 1243, holds:

“Upon an adjudication of bankruptcy title to all the property of the bankrupt, wherever situated, vests in the trustee as of the date of filing the petition in bankruptcy. The Bankruptcy Court has exclusive jurisdiction, and that court’s possession and control of the estate cannot be affected by the proceedings in other courts, state or federal. (Citing cases.) Such a jurisdiction having attached, control of the administration of the estate cannot be surrendered, even by the court itself.”

In re Antigo Screen & Door Co., 123 Fed. 249

“We take it that any court, either one in equity, common law, admiralty or bankruptcy, having in its treasury a fund to which there is a dispute, may, by virtue of its inherent powers, determine the right to the fund thus in its possession. Jurisdiction in that respect is an incident to every court * * *. The fund so possessed is in *custodia legis* and right to it may only be asserted and determined in the court which possesses it.”

Remington on Bankruptcy, Volume 5, page 518, Section 2352 provides:

“And all actions in regard to property in its custody must be taken (unless, perhaps, in some cases, the bankruptcy court permits otherwise) in the bankruptcy court.”

Remington on Bankruptcy, Volume 5, page 301, provides:

“It is not Clause (a) of Section 23 of the Bankruptcy Act, 11 U. S. C. A. Section 46, that enlarges the jurisdiction of the United States District (formerly the Circuit) Courts in bankruptcy litigations.

“So far as that Clause of Section 23 is concerned, they would only have jurisdiction over suits brought by trustees in bankruptcy, in case of diversity of citizenship, or some other jurisdictional fact existing, which in the usual procedure would have conferred jurisdiction on the District (formerly the Circuit) Court of the United States in case the bankrupt had sued; nor would they have jurisdiction in such cases unless the amount involved exceeded \$3,000.00, formerly \$2,000.00; but ‘consent’ to confer jurisdiction upon the District (formerly Circuit) Court in bankruptcy matters even where diversity of citizenship, etc., does not exist.”

Remington on Bankruptcy, Volume 5, page 569, Section 2369 provides:

“In general, neither a State Court, nor the United States District Court has jurisdiction, even by express permission of the Bankruptcy Court, to maintain an action the object of which is to determine the validity or extent of a claim against the bankrupt estate that is in process of administration in the bankruptcy court, or to determine priorities in the distribution of the assets of the bankrupt estate in such custody; for the jurisdiction of the Bankruptcy Court over the administration of the bankrupt estate is original and exclusive; and the Bankruptcy Court has no authority to designate that jurisdiction to another court.”

U. S. Fidelity & Guarantee Co. v. Bray, 225 U. S. 205, 56 L. Ed. 1055, holds:

“We think it is a necessary conclusion from these and other provisions of the Act that the jurisdiction of the bankruptcy courts in all proceedings in the bankruptcy court is intended to be exclusive of all other courts, and that such proceedings include, among

others, all matters of administration, such as the allowance, rejection and reconsideration of claims, the rights of the estate to money, and its distribution, the determination of the provisions and priorities to be accorded to claims presented for allowance and payments in regular course, and the supervision and control of the trustees and others who are employed to assist them.

“Of the fact that the suit was begun in the Circuit Court with the express leave of the court of bankruptcy it suffices to say that the latter was not at liberty to surrender its exclusive control over matters of administration or to confide them to another tribunal.”

Remington on Bankruptcy, Volume 5, page 306, Section 2182 provides:

“Therefore, as a rule, the state court would not be the one to which the trustee would be relegated were it not for still further exceptions found in Section 23 (b) and in Section 70e, (11 U. S. C. A. Section 46, 110, later discussed). Thus, ever since the amendments of 1903, 1910 and 1926 the state court has been a proper forum before the first of these amendments conferring plenary jurisdiction in certain cases on the bankruptcy courts, the state courts alone possessed such jurisdiction in certain cases on the bankruptcy courts, the state courts alone possessed such jurisdiction except where diversity of citizenship conferred jurisdiction on the federal (now district) courts.

“The state court is not debarred from jurisdiction over suits against adverse claimants by any of the provisions of the Act.”

See:

City of Long Beach v. Metcalf, 103 Fed. (2d) 483.

POINT II.

The Court Erred in Finding That California Century Corporation Rendered Itself Insolvent by Virtue of Its Transfer of Shares of the Amusement Enterprises, Inc., to Appellant.

It is conceded that subsequent to January 11, 1939 the California Century Corporation transferred all of its assets to appellant except that certain real property with improvements thereon referred to as the "parking lot" [Findings XII and XIII of Tr. of Rec. pp. 21 and 22], however, appellee completely failed to produce any evidence from which the court could determine the value of said "parking lot" at the time said transfer was made.

Appellant cannot understand how the court could decide that the California Century Corporation rendered itself insolvent by the above mentioned transfers when it is conceded that said California Century Corporation retained the "parking lot" and appellee introduced no evidence whatsoever as to the value of said "parking lot" at the time the transfer was consummated.

Mr. Robert Baker, a real estate agent and appraiser qualified as an expert and was asked by appellee on direct examination the value of the "parking lot" on January 9, 1939, a wholly immaterial date. The question was objected to on proper grounds, however, the court overruled the objection and Mr. Baker was allowed to testify [Tr. of Rec. p. 64]:

"Q. By Mr. Hart: What in your opinion was the reasonable market value or fair market value of that property on the 9th of January, 1939?

Mr. Musgrove: I object to that as incompetent, irrelevant and immaterial on the ground that the value of that property on the 9th of January, 1939 is not material to the issues of this case. * * *."

Appellee did not attempt to introduce any evidence, which it could have done, of the value of said property subsequent to January 11, 1939 when the transfer took place and in the absence of any evidence thereof, it must be presumed that such evidence would have been unfavorable to said appellee. The court erred in allowing Mr. Baker to testify over proper objection as to the value of the "parking lot" on January 9, 1939 and therefore such evidence should not be considered. An exception to the court's ruling allowing such testimony is not necessary. *Rules of Civil Procedure of the District Courts of the United States*, Rule 46. There is no presumption that the value of property remains the same, particularly when the property is used in a highly speculative business such as that of an amusement center. *Estate of Delaney*, 37 Cal. 176.

Conclusion.

Appellant contends that it is the duty of a referee in bankruptcy to hear all disputes concerning property in his possession. This duty is probably nondelegable. There have been some instances in which the referee in bankruptcy has permitted actions to be filed against the trustee in bankruptcy in other courts and when the referee has such right, the action must be brought in a proper court. The United States District Court is given a very limited jurisdiction over such matters by Section 23a of the Bankruptcy Act and if the matter does not fall within

such section said District Court has no jurisdiction whatsoever over the subject matter of the action. In this case it can be readily determined from the pleadings and the facts that the action could not have been maintained in the United States District Court between the parties had there been no bankruptcy proceedings and therefore said Section 23a of the Bankruptcy Act expressly excludes this action from being tried by said District Court.

The court determined herein that the California Century Corporation rendered itself insolvent at the time it transferred its shares of stock in the Amusement Enterprises, Inc., to appellant, Lewis, in spite of the fact that said court found that the California Century Corporation still had assets, referred to as the "parking lot". There is no competent evidence in the record that said "parking lot" was of less value than the liabilities of said California Century Corporation, in fact there was no evidence whatsoever introduced at the trial as to the value of the "parking lot" subsequent to January 11, 1939, the date of the transfer. It was appellee's duty as plaintiff to prove that the California Century Corporation was insolvent at the time of the transfer and appellee wholly failed in this respect.

For the above reasons, appellant asks that the judgment be reversed and that appellant be reimbursed for his costs of suit herein expended.

Respectfully submitted,

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